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<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)</b>		Docket Number (Optional)  VA30455 US
First Named Inventor: <u>Jean-Xavier Morin</u> Art Unit: <u>3749</u> Application Number: <u>10/590,357</u> Examiner: <u>Gregory A. Wilson</u> Filed: <u>September 14, 2006</u>		
Title:  <b>OXYGEN-PRODUCING OXYCOMBUSTION BOILER</b>		
<p>Attention: Office of Petitions  <b>Mail Stop Petition</b>          Commissioner for Patents          P.O. Box 1450          Alexandria, VA 22313-1450</p> <p>NOTE: If information or assistance is needed in completing this form, please contact          Petitions Information at (571) 272-3282.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p><b>APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.</b>          NOTE: A grantable petition requires the following items:</p> <ul style="list-style-type: none"> <li>(1) Petition fee.</li> <li>(2) Reply and/or issue fee.</li> <li>(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and</li> <li>(4) Adequate showing of the cause of unavoidable delay.</li> </ul> <p>1. Petition fee</p> <p><input type="checkbox"/> Small entity – fee \$ _____ (37 CFR 1.17(l)). Applicant claims small entity status.          See 37 CFR 1.27.</p> <p><input checked="" type="checkbox"/> Other than small entity – fee \$ <u>620.00</u> (37 CFR 1.17(l)).</p> <p>2. Reply and/or fee</p> <p>A The reply and/or fee to the above-noted Office action in the form of  <u>Notice of Allowance</u> (identify the type of reply):</p> <p><input type="checkbox"/> has been filed previously on _____ .</p> <p><input checked="" type="checkbox"/> is enclosed herewith.</p> <p>B The issue fee of \$ <u>2040.00</u></p> <p><input type="checkbox"/> has been filed previously on _____ .</p> <p><input checked="" type="checkbox"/> is enclosed herewith.</p>		

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

## 3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

Lawrence P. Zale

Typed or printed name

ALSTOM Power Inc., 200 Great Pond Drive, P.O. Box 500

Address

Windsor, CT 06095-0500

Address

Enclosure  Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unavoidable delay

\_\_\_\_\_

December 21, 2011

Date

34,461

Registration Number, if applicable

860-285-4813

Telephone Number

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

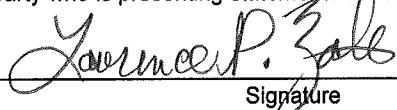
Signature

Typed or printed name of person signing certificate

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature

Lawrence P. Zale

Typed or printed name

Dec. 21, 2011

Date

34,461

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

Please see the attached documents:

1. "PETITION FOR REVIVAL OF AN APPLICATION ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)"

and

2. "DECLARATION OF DEBORAH PICCIANO IN SUPPORT OF PETITION FOR REVIVAL OF AN APPLICATION ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)".

These are incorporated into this Petition for Revival.

(Please attach additional sheets if additional space is needed.)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:  
Jean-Xavier MORIN )  
Application No.: 10/590,357 ) Examiner: Gregory A. WILSON  
)  
Filing Date: September 14, 2006 ) Conf. No.: 6742  
)  
Title: OXYGEN PRODUCING ) Art Unit: 3749  
OXYCOMBUSTION BOILER )  
) Docket No.: VA30455  
)

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION  
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Honorable Sir:

This is being sent in response to the Notice of Abandonment having a Notification Date of 10/04/2011 indicating that this application has become abandoned for failure to timely pay the Issue Fee that was due September 19, 2011.

Remarks begin on page 2 of this paper.

## REMARKS

The delay in paying the Issue Fee was due to a docketing error that resulted in “unavoidable delay”.

*“A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis of a showing of an “unavoidable” delay, provided that it is shown that:*

- (A) the error was the cause of the delay at issue;*
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and*
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance on such person represented the exercise of due care.”, MPEP 711.03(c).*

An affidavit by Deborah Picciano, the manager of the patent docketing function for the present application, is attached attesting to the facts supporting a determination that the error was an ‘unavoidable delay’. Ms. Picciano has personal knowledge of the facts set forth in the attached Affidavit.

The failure to follow the standard docketing procedure shown in Attachment A is an ‘error’ on the part of an ALSTOM ‘employee’. This docketing error may be construed as the performance of a ‘clerical function’.

*“(A) the error was the cause of the delay at issue”, MPEP 711.03(c).*

Since there was no entry into the database regarding the payment of the Issue Fee, no database reminder was generated from the ALSTOM IP Master database system. Therefore, no payment was made.

*”(B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance”*

In the attached Declaration, Ms. Picciano has attached a flowchart showing the ALSTOM docketing procedure as Attachment A. This is the business routine for performing the clerical functions such as keeping track of due dates and paying annuities.

*"(C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance on such person represented the exercise of due care", MPEP 711.03(c).*

As indicated in the Attached Declaration, *"Ms. Schofield was sufficiently trained and experienced in ALSTOM's procedure for docketing patent/patent applications and making annuity payments".*

Ms. Schofield's handling of this type of work for ALSTOM is well within the exercise of 'due care'.

The required fee for this Petition and the Issue Fee are both being paid through ALSTOM's Deposit Order Account.

Should there be any questions regarding this correspondence, please contact the undersigned at the telephone number provided below.

The Applicant respectfully requests that this Petition to Revive be granted.

Respectfully submitted,



Lawrence P. Zale  
Attorney for Applicant  
Reg. No. 34,461

Date: December 21, 2011

ALSTOM Power Inc.  
200 Great Pond Drive  
P.O. Box 500  
Windsor, CT 06095-0500  
Phone: 860-285-4813

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:  
Jean-Xavier MORIN )  
Application No.: 10/590,357 ) Examiner: Gregory A. WILSON  
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Filing Date: September 14, 2006 ) Conf. No.: 6742  
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Title: OXYGEN PRODUCING ) Art Unit: 3749  
OXYCOMBUSTION BOILER )  
) Docket No.: VA30455  
)

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**DECLARATION OF DEBORAH PICCIANO IN SUPPORT OF  
PETITION FOR REVIVAL OF AN APPLICATION  
ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)**

To whom it may concern:

I, Deborah Picciano, residing at 31 Colony Road, Canton CT 06019, hereby declare:

1. I am presently employed by ALSTOM Power Inc. ("ALSTOM") at the ALSTOM facility located at 200 Great Pond Drive, Windsor, CT 06095-0500. I have been employed by ALSTOM and its predecessor companies for the last thirty-one (31) years. My function for the past thirty-one (31) years has been to manage personnel that perform docketing for ALSTOM's Intellectual Property portfolio managed from the US region. As part of my job responsibilities, I am in charge of, among other functions, managing docketing clerks that keep track of all deadlines associated with the prosecution or maintenance of US and foreign patent applications and patents. Currently, this portfolio numbers approximately 2950 patents and patent applications.
  
2. On or about 06/20/2011, our department received a Notice of Allowance mailed 06/17/2011 requiring the Issue to be paid by 09/19/2011. It was intended that such a notification would be handled by our standard internal procedure.

3. On or about 10/04/2011, our department then received a Notice of Abandonment for this case having a Notification Date of 10/04/2011.
4. After receiving the Notice of Abandonment, we performed internal research as to why the Issue Fee was not paid on time. Attachment A shows our standard procedure for receiving papers from the patent offices, docketing them, marking them as docketed, adding an entry into our professional IP Master database program, and printing out weekly deadline lists from the IP Master for each attorney and administrator.
5. After researching the error, it appears that an employee of ALSTOM, Nancy Schofield, had received the Notice of Allowance, performed the step in block "A", but had somehow missed blocks "B", "C", "D" and "E" and continued at block "F".
6. ALSTOM uses an IP Master automated docketing system, specially designed by Thomson IP Management Services to provide due date reminders for all required actions. Issue Fee payments are made based upon due date reminders generated by the IP Master database system. Since there was an error in docketing and the IP Master system did not receive the indication that there was an Issue Fee due on this case, and the database did not generate a reminder to pay the Issue Fee. As a direct result, no Issue Fee was paid.
7. The flowchart in Attachment A indicates the standard 'business routine' for managing incoming mail and docketing, which was in place and required for all docketing clerks. It was used for several years, and proved to be reliable and resulted in few errors, if followed.
8. All employees that perform any part of the docketing process are trained to follow this process. Nancy Schofield is an experienced patent paralegal with more than three (3) years of experience with ALSTOM in the Intellectual Property Law Department. She had been trained according to the process shown in Attachment A. Prior to working with ALSTOM, she worked for Cantor Colburn, a large Intellectual Property Law firm in

Hartford, CT performing patent docketing, annuity payments and assisting in prosecution. Ms. Schofield was sufficiently trained and experienced in ALSTOM's procedure for docketing patent/patent applications and making annuity payments.

9. This error appears to be an isolated incident that may be attributed to a distraction during the docketing of this case.
10. It was my intent to have the Issue Fee paid, and there was no intention or indication to forego payment of the Issue Fee for this application.
11. I believe that there was an inadvertent clerical error in docketing, made by an experienced and properly trained ALSTOM employee that caused the delay in payment of the Issue Fee, and abandonment of the application.
12. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C, 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**DECLARANT:**

Date: Dec. 21, 2011

Windsor, CT



Deborah M. Picciano

## Electronic Paper Flow – ALSTOM

### ATTACHMENT A

